IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KBK INDUSTRIES, LLC.	)	
	)	
Plaintiff,	)	
	)	Case No. 5:17-cv-242
v.	)	
	)	
BELCO MANUFACTURING COMPANY, INC.	)	
	)	
	)	
Defendant.	)	

COMPLAINT FOR PATENT INFRINGEMENT

KBK Industries, LLC ("Plaintiff" or "KBK"), by its undersigned counsel, for its complaint against defendant Belco Manufacturing Company, Inc. ("Defendant" or "Belco"), hereby alleges as follows:

NATURE OF LAWSUIT

1. This action involves claims for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

2. As set forth in more detail below, Belco has infringed United States Patent No. 8,496,740 ("the '740 patent"), in connection with its manufacture and sale of skim tanks used in Salt Water Disposal ("SWD") facilities.

THE PARTIES

3. KBK is a limited liability company organized under the laws of the state of Delaware and having offices at 1914 Highway 183, Rush Center, KS 67575. KBK is an industry

leading oil recovery and storage company that offers, among other things, products, expertise and services to assist its customers to safely and economically store, separate and recover oil and water.

4. Defendant Belco is a corporation organized under the laws of the State of Texas with a place of business within this Judicial District at 2303 Taylors Valley Road, Belton, Tx 76513-0210.

JURISDICTION AND VENUE

5. This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et.seq*.

6. This Court has personal jurisdiction over Belco based on its residence within this District, its regular business activities conducted in this District and the acts which are complained of in this Complaint. Upon information and belief, Belco continues to reside and transact business in this District, has committed and/or induced acts of infringement in this District, and continues to commit and/or induce acts of infringement in this District, including but not limited to the sale or offer for sale of infringing products in this District, for instance the offer for sale of infringing products to be installed at Carrizo Springs, Texas, Jourdanton, Texas, and Pearsall, Texas, all within the Eagle Ford Shale formation.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b) because Belco is deemed to reside in this District, and because a substantial part of the events giving rise to the claims occurred in this District.

THE PATENT IN SUIT

8. The ’740 patent, entitled “Apparatus for Separating Oil Well Products,” issued on July 30, 2013. The ’740 patent issued from U.S. Patent Application No. 13/190,560, filed July 26, 2011. A copy of the ’740 patent is attached as Exhibit A.

9. The ’740 patent is directed to tanks that may be used to separate oil well products from water and other materials. During hydraulic fracturing, a wellbore is drilled into the ground and a hydraulic fracturing fluid consisting primarily of water is pumped into the wellbore to open and enlarge fractures within a shale rock formation. After fracturing the shale rock, the internal pressure of the rock formation causes the injected fluid to return to the surface through the wellbore. The fluid that returns to the surface is often referred to as “flowback” and contains oil, natural gas, water and solids.

10. A SWD facility functions to separate oil and natural gas from the solids and water contained in the flowback. SWD facilities typically comprise large tanks to store the flowback at various stages during the separation process. Due to the size of the tanks, the SWD facilities are typically located in remote areas and on private property such that access to the facility is restricted.

11. KBK designs and builds SWD facilities on behalf of its customers. As part of a SWD facility design, or on an individual basis, KBK offers a skim tank it calls a HWSB® (Hydrodynamic Water Separation Breakthrough) skim tank (hereinafter “HWSB® Water Skimming Tank”), which is covered by the ’740 patent. The patented technology helps to achieve a greater efficiency in recovering oil/natural gas from water/solids from flowback processed in SWD facilities.

12. KBK owns all right, title and interest in the ’740 patent, including the right to recover damages for past, present, and future infringement of the patent and the right to seek injunctive relief against infringement of the patent, by assignment. KBK has standing to sue for infringement of the ’740 patent.

13. Defendant Belco competes with KBK for sales of tanks utilized in SWD facilities, and the design of SWD facilities. Defendant Belco was given access to the patented technology through a license to manufacture products under the ’740 patent granted by the inventor thereof. The license was conditioned on certification requirements with respect to Belco tanks manufactured under the ’740 patent. Belco manufactured and sold tanks covered by the ’740 patent even though it did not satisfy the certification requirements. Prior to the Defendant’s activities described in this Complaint, the license to Belco under the ’740 patent was terminated. Belco is currently not licensed under the ’740 patent.

COUNT I

Infringement of U.S. Patent No. 8,496,740

14. KBK incorporates by reference the allegations in Paragraphs 1 through 13 above.

15. Upon information and belief, Defendant Belco infringes at least claims 3 and 13 of the ’740 patent through making, using, selling and offering for sale tanks used in SWD facilities that are substantially similar to KBK’s patented HWSB® Water Skimming Tank.

16. On information and belief, Belco has offered such tanks that are substantially similar to KBK’s patented HWSB® Water Skimming Tank to at least its customer NGL Energy Partners (“NGL”).

17. KBK has sold tanks, including the HWSB® Water Skimming Tank covered by the ’740 patent, to NGL in the past. Since 2013 NGL has purchased nineteen HWSB® Water Skimming Tanks from KBK. NGL is aware of the design of KBK’s HWSB® Water Skimming Tanks.

18. In October 2016, KBK participated in a competitive bid to supply NGL with skimming tanks for a new SWD facility. KBK’s offer, in response to NGL’s bid request, included HWSB® Water Skimming Tanks. KBK also provided to NGL technical drawings of the HWSB® Water Skimming Tank.

19. In connection with the competitive bid to NGL, NGL personnel informed KBK that Defendant Belco was offering tanks substantially similar to KBK’s HWSB® Water Skimming Tank. Specifically, it was stated that the only difference between the Belco skimming tank and KBK’s HWSB® Water Skimming Tank was that the Belco tank did not include an emulsion draw-off feature. At the time these statements were made to KBK, NGL was aware of the design and technical specifications of KBK’s HWSB® Water Skimming Tank and, upon information and belief, were aware of Defendant Belco’s skimming tanks based on design drawings and technical specifications provided to NGL by Defendant Belco in relation to the bidding process.

20. None of the claims of the ’740 patent require an emulsion draw-off feature. Claim 3 of the’740 patent is a dependent claim that depends from claim 2, which itself depends from claim 1. Claims 1-3 of the ’740 patent recite:

> 1. An apparatus for separating oil well products comprising:

> a tank for receiving oil well products, an internal water leg that is adjustable in height, and
> adjustment means for adjusting the height of the internal water leg being provided externally on the tank.
>
> 2. An apparatus for separating oil well products according to claim 1 further comprising:
> an inverted upper spreader located immediately below tank fluid inlets located within the tank where oil well products enter the tank.
>
> 3. An apparatus for separating oil well products according to claim 2 further comprising:
> an engineered water spillover weir provided in association with the internal water leg, and said water spillover weir sized consistent with the flow rate of the oil well products entering the tank at the tank fluid inlets and sized to minimize the pressure loss as the water flows through the water spillover weir.

21. Claim 13 of the'740 patent is a dependent claim that depends from claim 11. Claims 11 and 13 of the '740 patent recite:

> 11. An apparatus for separating oil well products comprising:
> a tank for receiving oil well products,
> swirl wings provided in association with tank fluid inlets so that the swirl wings direct oil well products entering the tank via the tank fluid inlets to spiral outward in the tank in a helical orientation,
> an internal water leg extending upward within the tank from above a lower portion of the tank so that water enters the water leg at the bottom of the water leg, and
> said water leg that is adjustable in height.
>
> 13. An apparatus for separating oil well products according to claim 11 further comprising:
> a degassing chamber located within the tank such that free gases are removed from the oil well products prior to entering into the tank via the tank fluid inlets.

22. Each of the above-recited features of claims 1-3, 11 and 13 are included in KBK's patented HWSB® Water Skimming Tank. None of the above-recited features is directed to an emulsion draw-off feature said by NGL to be absent from Defendant Belco's skimming tanks.

23. On November 14, 2016, KBK sent a letter (attached as Exhibit B) to Mr. Robert Bennett, CEO of Denali, Inc., Defendant Belco's parent company, notifying Defendant Belco of the '740 patent and of KBK's patented technology, expressing that this technology is exclusively offered for sale by KBK, and demanding confirmation that Defendant Belco respects KBK's intellectual property. NGL thereafter accepted KBK's offer to supply an initial order of three HWSB® Water Skimming Tanks pursuant to the competitive bid requested by NGL.

24. On November 29, 2016, Ms. Cathy L. Campbell, General Counsel of Denali Inc., sent a letter (attached as Exhibit C) in response to KBK's November 14 letter informing KBK that Defendant Belco "does not manufacture or sell tanks that infringe any valid claim of the '740 patent." This letter sent on behalf of Defendant Belco does not deny that its water skimming tanks include every limitation of the claims of the '740 patent, nor does it offer any proof that Defendant Belco's water skimming tanks offered for sale pursuant to the competitive bid requested by NGL do not infringe the '740 patent.

25. Subsequent to receiving the November 29 letter sent on behalf of Defendant Belco, KBK learned that Belco had won an order from NGL for a plurality of skimming tanks to be used in new SWD facilities. Because KBK did not win the bid for these skimming tanks, KBK is unable to participate in the profits resulting from the sale of those tanks. The award for these Belco skimming tanks resulted from the competitive bid between KBK and Belco and,

upon information and belief, these Belco skim tanks ordered by NGL infringe KBK's '740 patent.

26. After learning of losing NGL's bid for supplying additional skim tanks, on March 2, 2017, KBK sent another letter (attached as Exhibit D) responding to Defendant's November 29 letter. KBK's letter of March 2, 2017, noted that Belco's November 26 letter neither denied nor acknowledged that Belco's tanks meet the limitations of the '740 patent. KBK's letter further requested that Defendant provide drawings sufficient to determine whether those tanks NGL purchased from Defendant infringe KBK's '740 patent by March 17, 2017.

27. On March 6, 2017, Ms. Cathy L. Campbell, on behalf of Defendant Belco, sent a letter (attached as Exhibit E) responding to KBK's letter of March 2, 2017. In this letter, without addressing the comments made by NGL, or providing the drawings KBK requested, Belco contended that it is not manufacturing or selling tanks that infringe the '740 patent. Belco refused to share any information about the design of Belco's tanks with KBK or its attorneys.

28. Given the information KBK has received concerning tanks sold by Belco, and Belco's refusal to provide evidence of the structure of those tanks, upon information and belief, Belco is infringing at least claims 3 and 13 of the '740 patent by fulfilling NGL's bid for additional skim tanks for its SWD facilities, resulting in damages in an amount not yet fully known.

29. Defendant's infringement has injured and will continue to injure KBK unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining Belco's further manufacture, use or sale of skimming tanks that come within the scope of the '740 patent.

KBK'S DEMAND FOR A JURY TRIAL

30. KBK hereby respectfully demands a jury trial as to all such triable issues in this action.

KBK'S PRAYER FOR RELIEF

WHEREFORE, Plaintiff ask this Court to enter judgment against Defendant Belco, and against its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

A. An award of damages adequate to compensate KBK for the infringement that has occurred, together with prejudgment interest from the date that Defendant's infringement of the '740 patent began;

B. Increased damages as permitted under 35 U.S.C. § 284;

C. A finding that this case is exceptional and an award to KBK of its attorneys' fees and costs as provided by 35 U.S.C. § 285;

D. A permanent injunction prohibiting further infringement of the '740 patent; and

E. Such other and further relief as this Court or a jury may deem proper and just.

Dated: March 24, 2017

Respectfully Submitted,

/s/ J. Daniel Harkins

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